



U.S. Department of Justice

*United States Attorney
Eastern District of New York
271 Cadman Plaza East-7th Floor
Brooklyn, NY 11201*

April 23, 2012

By ECF

Honorable Lois Bloom
United States Magistrate Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Burton v. Shinseki et al.*
10-cv-05318 (SLT) (LB)

Dear Magistrate Judge Bloom:

This Office represents defendant, Secretary Eric K. Shinseki, in the above-referenced employment discrimination action. We write to inform the Court of a recent development in this matter regarding Ms. Burton's apparent non-receipt of some of this Office's correspondence and, in particular, Secretary Shinseki's Second Amended Notice of Deposition, notifying plaintiff of her March 14, 2012 deposition, at which she failed to appear.

As Your Honor will recall, the Court issued a Report and Recommendation ("R&R") on April 13, 2012, recommending that the above-referenced matter be dismissed pursuant to Rules 37(b)(2)(A)(v) and 37(d) of the Federal Rules of Civil Procedure. *See* ECF No. 74. In so concluding, the Court reasoned that:

Plaintiff's non-compliance has been willful and without explanation. Plaintiff has repeatedly failed to respond to defendant's discovery requests, notices for deposition, and efforts to contact her. Even without a Court Order, this noncompliance is grounds for dismissal. *See* Fed. R. Civ. P. 37(d)(3). Plaintiff has also failed to respond to Court Orders directing her to respond to defendant's motion to compel and to show good cause why the case should not be dismissed. (ECF Nos. 66, 71.) Plaintiff's failure to comply is a sufficient basis to dismiss this action.

Id. at 6.

Today, this Office received numerous returned mailings that it had sent, by certified mail, to plaintiff's address of record. Prior to seeking dismissal of this action pursuant

Honorable Lois Bloom

April 23, 2012

Page 2

to Rules 37 and 41, this Office confirmed receipt of its mailings through the United States Postal Service's website. Notwithstanding delivery, several of our mailings to Ms. Burton, including the Second Amended Notice of Deposition, were returned "to sender" without further explanation. *Compare* Ex. A, returned mailing, *with* Ex. B, Track & Confirm details.

Notwithstanding Ms. Burton's apparent non-receipt of some of this Office's mailings, Ms. Burton has failed to inform the Court or the undersigned counsel of her current address or telephone number, let alone taken any steps to pursue this action since its commencement one year and four months ago, on December 23, 2010. Importantly, we received signed confirmation that, on December 28, 2011, Ms. Burton received Secretary Shinseki's First Set of Interrogatories and Document Requests, dated December 23, 2011. To date, plaintiff has wholly failed to respond to these discovery demands. Further, in addition to mailing the Second Amended Notice of Deposition, we made numerous attempts to call plaintiff at telephone numbers that she provided to the Court at various times throughout this litigation.

As this Court recently observed, even a *pro se* plaintiff "is obligated to notify the court when he changes addresses." *Canario-Duran v. Borecky*, No. 10-cv-1736 (DLI) (LB), 2011 WL 176745, at *1 (E.D.N.Y. Jan. 19, 2011) (citations omitted).¹ That failure alone warrants dismissal of this action. *See id.* (dismissing action where plaintiff failed to contact the Court or defendants to provide a current address). Accordingly, plaintiff's failure to prosecute this matter, failure to respond to defendant's discovery demands, and failure provide updated contact information reinforce the Court's conclusion that "plaintiff has abandoned this action." R&R at 7.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney

By: /s/ electronically signed
Ameet B. Kabrawala
Assistant U.S. Attorney
(718) 254-6001

cc: By First-Class Mail
Ms. Ann Burton
General Delivery
46-02 21st Street
Long Island City, NY 11101

¹ Pursuant to Local Civil Rule 7.1(c), a copy of this unpublished decision is provided to plaintiff herewith.

Honorable Lois Bloom

April 23, 2012

Page 3

By ECF

Honorable Sandra L. Townes

United States District Judge

EXHIBIT A

Aimee K. Kallawa, AUSA

U.S. Department of Justice
United States Attorney's Office
Eastern District of New York
220 Broadway, 15th Floor
New York, NY 10038

Ms. Anne Burton
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46-02 21st Street
Long Island City, NY 11101

2/6/12
NOT

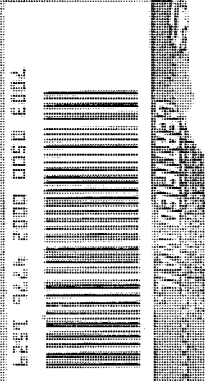
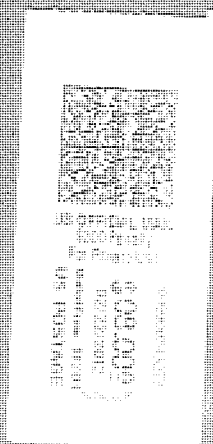


EXHIBIT B

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Track & Confirm

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YOUR LABEL NUMBER	SERVICE	STATUS OF YOUR ITEM	DATE & TIME	LOCATION	FEATURES
70030500000247761529		Delivered	April 23, 2012, 10:17 am	BROOKLYN, NY 11201	Certified Mail™
		Notice Left (No Authorized Recipient Available)	April 20, 2012, 1:28 pm	BROOKLYN, NY 11201	
		Arrival at Unit	April 20, 2012, 1:22 pm	BROOKLYN, NY 11201	

Check on Another Item
What's your label (or receipt) number?

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